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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,811	01/28/2000	John W. Becker	7436.100A	1405
7590	11/02/2004		EXAMINER	
Thomas P. Liniak MYERS LINIAK & BERENATO 5550 Rock Spring Drive Suite 240 Bethesda, MD 20817			DESAI, HEMANT	
			ART UNIT	PAPER NUMBER
			3721	
				DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/492,811	BECKER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Hemant M Desai	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13-20,22-26 and 28-67 is/are pending in the application.
- 4a) Of the above claim(s) 60-62 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13-20,22-26,28-59 and 63-67 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant contends that the restriction made between Group I, claims 13-20 and 22-59 drawn to a container and Group II, claims 60-62, drawn to method of packaging perishable goods in previous Office Action is not proper.

A restriction is proper if the Groups of claims are independent or distinct from each other and if there is a burden on the examiner if no restriction was required. In this instant application, the restriction is deemed proper because the groups of inventions are distinct from each other as stated in the previous office action. Furthermore, since the groups are classified in different class/subclass, it is deemed that there is burden on the examiner if no restriction was required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section n 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-17, 20, 22-26, 28-59 and 63-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bane, III (5441170) in view of Aghassipour (5595320).

Bane, III discloses an inner container (L, fig. 9), designed to be removably inserted into an outer container (O, fig. 3) comprising a bottom (32, fig. 9), collapsible (clearly inherent since material of inner container being flexible, see col. 3, lines 8-10) opposing first and second side walls (see figs. 9-10) and front and back walls (figs. 9-

10), each constructed of a flexible material (see col. 3, lines 8-10), the first and second side walls and the front and back walls forming an integral moisture proof seal with the bottom and each other (see figs. 9-10), an integral foldable side, front and back flaps (33, 35, 37, 39, figs. 9-10), extending above the side walls, front wall and back wall, comprising a top edge that is substantially straight along its entire length (see fig. 3).

Regarding claim 17, Bane III, discloses that front and back walls (see fig. 9) each have a gusseted reinforcement.

Regarding claim 17, Bane III, discloses that the flaps are selectively

Regarding claims 20,22 and 30, Bane, III discloses that the front flap is connected to the edges of both the first and second side flaps and they are integral (see fig. 3).

Regarding claims 23-24, Bane, III discloses that the top is formed with the front and back flaps folded.(see figs. 9 and 10).

Regarding claims 25, 31 and 39, Bane, III discloses that the bottom is substantially flat.

Regarding claims 26, 28-29, 35, all flaps are substantially the same height and are connected.

Regarding claims 41, 42, 45, wherein the height of walls and the flaps is adjustable, since after filling the content in the inner container at desirable height the top can be folded over the content (see col. 3, lines 8-10).

Regarding claims 32-33, 34, 36 and 40, Bane, III discloses that the inner container is collapsible and in flattened (see col. 3, lines 8-10, 28-30) it is an inherent

design feature that side walls are perpendicular to the bottom in the open position and parallel to the bottom in the folded position and the side walls in the folded position have a length and width that is no greater than the bottom.

Regarding claim 44, the flap is movable from an open position extends above the outer container (see figs. 3) to second position wherein it completely closes the inner container and is contained entirely within the outer container (see fig. 6).

Regarding claims 46-49, Bane, III discloses that the inner container is in direct contact with the outer container, therefore the metalized bottom and the side and front and back walls are in direct contact with the outer container.

Regarding claims 53, 54 and 59, Bane, III discloses that all the four walls forming an integral moisture proof seal with the bottom and each other and the top is movable from the open position to a closed position and back to the open position, therefore the modified metalized bottom and the side and front and back walls are forming an integral moisture proof seal with each other and with the bottom and the top is movable from the open position to a closed position and back to the open position.

Regarding claims 50 and 51, the metalized surface is not located in airtight pouch and not movable independent from the front and sidewalls.

Regarding claims 52 and 55, Bane, III discloses that the inner container is not adhered to the outer container when it is inserted therein.

Regarding claims 63-64, Bane, III discloses that the inner container is of flexible nature and therefore it inherent that the content is less the height is less than the height

of the outer container and when content is more (to its fullest capacity) the height of the inner container and outer container is same (see col. 3, lines 7-10).

Regarding claims 65-67, Bane, III discloses that the inner container is completely covered but does not provide an airtight seal (see figs. 3-4) and it is not adhered to the outer container.

Larsson et al., as mentioned above, disclosed all the limitations, except for an insulating material having a metalized surface and flexible bubble pack material. However, Aghassipour teaches an insulating material having a metalized surface (15, fig. 1a-1b) extending throughout the wall and flexible bubble pack material (14, fig. 1a-1b) to keep cold contents cold for substantially long periods of time (see col. 1, lines 45-65). Therefore it would have been obvious to one having ordinary skill in the art at time of invention to provide an insulating material in the container of Larsson having a metalized surface extending throughout the wall and flexible bubble pack material as taught by Aghassipour to keep cold contents cold for substantially long periods of time.

4. Alternatively, Claims 33-34 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bane, III and Aghassipour and further in view of McCord (728749).

This rejection is made to further show the well-known use of collapsible container in the packaging art. The modified container of Larsson et al., as mentioned above, shows the side walls are movable from a first open position substantially perpendicular to the bottom to a second folded position substantially parallel to the bottom. However, McCord teaches a collapsible container (A, figs. 1-5) having collapsible side walls (A3, figs. 1-3) and the top edge that is substantially straight along its entire length

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(see figs. 1-3) to provide a strong box and at the same time one which can be readily folded whenever desired (see lines 75-79). Regarding claims 32-33, 36 and 40, McCord teaches that side walls are perpendicular to the bottom in the open position and parallel to the bottom in the folded position (see figs. 2 and 5) and the side walls in the folded position have a length and width that is no greater than the bottom (see fig. 5).

Therefore it would have been obvious to one having ordinary skill in the art at time of invention to provide a collapsible side walls box structure as taught by McCord in the modified inner container of Larsson et al. to provide a stronger box and at the same time one which can be readily folded whenever desired.

5. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bane, III (5441170) in view of Aghassipour (5595320), and further in view of Becker (4929094).

The modified container of Larsson et al., as mentioned above, disclosed all the limitations, except for a selectively releasable means for securing the a portion of the first side flap to a portion of the second side flap. However, Backer teaches a selectively releasable means (82, 84, fig. 2) for securing the portion of the first flap to a portion of the second flap (see col. 3, lines 25-30). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the selectively releasable means as taught by Backer in the modified container of Bane, III for convenience of securing the top flaps of the inner container.

***Response to Arguments***

6. Applicant's arguments with respect to claims 13-20, 22-26, 28-59 and 63-67 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5:30 PM, Mon-Thurs.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai  
Examiner  
Art Unit 3721

HMD



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